

Message Text

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21

ACTION L-03

INFO OCT-01 ARA-16 ISO-00 EB-11 COME-00 JUSE-00 TRSE-00

SS-20 ABF-01 OMB-01 SCA-01 CIAE-00 INR-10 NSAE-00

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R 052050Z JUN 74

FM AMCONSUL GUAYAQUIL

TO SECSTATE WASHDC 3250

INFO AMEMBASSY QUITO

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E.O. 11652: N/A

TAGS: ABLD, EC

SUBJ: POSSIBLE USG CLAIM TO USCC PROPERTY - GUAYAQUIL

REF: A. GUAYAQUIL 392 APRIL 24, 1974;

B. STATE 091271

1. MISSION APPRECIATES DEPARTMENT'S PROMPT RESPONSE TO REF A. ALL POINTS RAISED REF B CHECKED OUT WITH ATTORNEY ROCA AND SOCIEDAD COMERCIAL ANGLO-ECUATORIANA MANAGING DIRECTOR KINGSLEY FOX WITH RESULTS AS FOLLOWS.

2. RE PARAGRAPHS 2 AND 4 OF REF B, SCAE, IN A LETTER DATED MAY 14, 1974, IRREVOCABLY DECLINES TO PURSUE MATTER IN OWN NAME. REASON GIVEN AS FOLLOWS: "... AS WE ARE CURRENTLY ENGAGED IN THE LAUNCHING OF A COMMERCIAL PROJECT THAT REQUIRES FULL COOPERATION FROM MORE THAN ONE MINISTRY AND OUR PARENT COMPANY LLOYDS BANK INTERNATIONAL IS ALSO DEALING WITH GOVERNMENT ON A SEPARATE MATTER, WE DO NOT WISH TO COMPROMISE OUR POSITIONS IN ANY AVOIDABLE WAY." IN SAME LETTER SCAE DOES REITERATE ITS OFFER OF FULL COOPERATION WITH THE USG. LETTER SIGNED BY FOX.

3. RESPONDING FURTHER TO POINTS RAISED PARA 2, REFTTEL B, WE FIND REASON (A) UNCONVINCING. IF WE DO DECIDE TO PURSUE CLAIM, OUR EXPLANATION WOULD BE QUITE LOGICAL. WE, AS REPRESENTATIVES OF THE LIMITED OFFICIAL USE

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USG, SAW ITS INTERESTS THREATENED SUCCESSIVELY BY DECREE 160 OF

28 JULY 1969 AND DECREE 251 OF MARCH 9, 1973. WE HAVE BEEN EVALUATING THIS SITUATION IN CONSULTATION WITH DEPARTMENT OF STATE THROUGHOUT THIS PERIOD AND HAVE COME TO THE CONCLUSION THAT WE SHOULD INDEED PURSUE SUCH CLAIM IN ACCORDANCE WITH ECUADOREAN LAW AND AS SPECIFICALLY PROVIDED BY DECREE 160 (ALTHOUGH WE WOULD OF COURSE PREFER TO HAVE CLAIM RECOGNIZED, WITH COMPENSATION, WITHOUT RESORTING TO COURT ACTION). THE ORIGINAL LEASE PURCHASE CONTRACT, WHICH

IS A PUBLIC INSTRUMENT, PROVIDES FOR TRANSFER AT ANY MOMENT UNTIL THE END OF THE CURRENT OPTION TERM IN 1994 AND WE HAVE CHOSEN THIS PARTICULAR MOMENT. POINT (B) SEEMS TO PRESENT NO DIFFICULTY IN THAT AN AFFIDAVIT DESIGNATING THE TREASURY DEPARTMENT AS THE SUCCESSOR AGENCY TO USCC WOULD BE PERFECTLY ACCEPTABLE IN ECUADOR ONCE CERTIFIED ROUTINELY BY THE ECUADOREAN EMBASSY IN WASHINGTON AND THE FOREIGN MINISTRY HERE.

4. QUESTION OF PAYMENT OF TAXES RAISED BY JUSTICE IS A VALID ONE. AS INDICATED IN REF A, DR. ROCA BELIVES THAT USG WOULD HAVE TO PAY BACK TAXES UPON EXECUTION OF PROPERTY TRANSFER, BUT HE WOULD EXPECT THESE TO AMOUNT TO LESS THAN US \$2,000. ON THE OTHER HAND, OUR INTENTION WOULD BE TO REQUEST EXONERATION FROM TRANSFER TAXES, WHICH WOULD AMOUNT TO CONSIDERABLY MORE MONEY, BASED ON THE PRESUMPTION THAT WE WERE PLANNING TO USE LAND AS A SITE FOR CONSULAR OFFICES AND/OR RESIDENCES IF TITLE WERE SECURED. DEPARTMENT OFFICERS FAMILIAR WITH HISTORY THIS CASE WILL RECALL THAT TWO FORMER PRINCIPAL OFFICERS DID CONTEMPLATE UTILIZING PROPERTY FOR OFFICIAL BUILDINGS. WHILE WE PRESENTLY DOUBT THAT SUCH USE IS FEASIBLE, IT IS CERTAINLY PLAUSIBLE THAT WE WOULD HAVE SUCH INTENTION AND WE WOULD APPROACH THE REQUEST FOR TRANSFER TAX EXEMPTION ON THAT BASIS. IF AND WHEN TITLE WERE SECURED, WE WOULD IN DUE COURSE INFORM THE GOE THAT OUR STUDIES HAD INDICATED THAT THE LAND IS NOT APPROPRIATE FOR USG USE AND THAT WE WERE RETRACTING OUR REQUEST FOR TAX EXEMPTION. THIS NOTIFICATION WOULD BE MADE ONLY AFTER WE HAD AGREEMENT IN WRITING FROM THE EVENTUAL PURCHASER, SO THAT PAYMENT OF THE TAXES FROM WHICH WE WERE NO LONGER EXEMPT WULD BE MERELY A DISCOUNT FROM OUR SALES PROCEEDS, INVOLVING NO OUT-OF-POCKET EXPENSE FOR THE USG. ATTORNEY ROCA CONSIDERS THIS PROCEDURE TO BE LEGAL AND RELATIVELY SIMPLE AND WE CONCUR.

5. RE JUSTICE'S PREOCCUPATION OVER POSSIBLE POLITICAL RISKS MISSION LIMITED OFFICIAL USE

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EVALUATED SUCH RISKS AND FOUND THEM TO BE WITHIN ACCEPTABLE LIMITS PRIOR FORWARDING REF A.

6. REF PARA 5 YOUR MESSAGE, ROCA'S STATEMENT IN CLOSING PARA OF HIS STUDY HAS BEEN COMPLETELY MISINTERPRETED. WE HAD ASKED HIS OPINION ON PROBABILITIES OF SUCCESS, AND HE WAS MERELY POINTING OUT THAT HIS PROFESSIONAL ETHICS DO NOT PERMIT HIM TO VIOLATE CITED ORDINAL 3, ARTICLE 202, OF THE LAW OF JUDICIAL POWER. THIS ORDINAL,

WHICH APPARENTLY IS IGNORED BY SOME ECUADOREAN ATTORNEYS, SAYS
SIMPLY "ATTORNEYS ARE PROHIBITED FROM ASSURING THEIR CLIENT OF A
SUCCESSFUL OUTCOME".

7. SCAE LETTER OF JANUARY 14, 1969, HAS BEEN FORWARDED TO DAVID GANTZ
UNDER COVER OFFICIAL-INFORMAL LETTER. DEPARTMENT WILL NOTE THAT
LAST PARA OF LETTER SPECIFICALLY DECLARES THAT USCC HAS ABIDED BY
NOTIFICATION REQUIREMENT. THEREFORE ONLY POSSIBLE CHALLENGER TO
PROCEDURE, SCAE, HAS ALREADY CERTIFIED THAT PROCEDURE WAS PROPER.
"FURTHERMORE, MANAGEMENT OF SCAE WOULD NOT CONTEST THIS POINT EVEN
IF LEGALLY POSSIBLE SINCE THEY ARE COMMITTED TO COOPERATING WITH
ANY ACTION WE MAY WISH TO TAKE TO ASSERT CLAIM.

8. WE REPEAT REQUEST FOR AUTHORIZATION TO PROCEED DETAILED PARA 9
OF REF A.

9. EMBASSY CONCURS.
DEWITT

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Message Attributes

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Draft Date: 05 JUN 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: cunninfx
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
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